

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 8

999 18TH STREET - SUITE 300

DENVER, CO 80202-2466

<http://www.epa.gov/region08>

Ref: ENF-L

BY FACSIMILE AND MAIL

April 4, 2001

Kenneth Lund, Esq.
Holme, Roberts & Owen
1700 Lincoln St., Suite 4100
Denver, CO 80203-4541

Dear Mr. Lund:

My client has asked that I respond to a letter sent by you on January 18, 2001 to Mr. Paul Peronard, the EPA On-Scene Coordinator at the Libby Asbestos Site. The letter's major purpose was the transmittal of a restoration plan for the Export Plant, but it also included legal arguments about EPA's authority to require tenant participation in the approval of relocation issues. EPA and your client, W.R. Grace, were involved in both litigation and administrative proceedings at the time. I am concerned that you did not notify me prior to initiating legal discussions with my client or copy me on the correspondence. While it is true that my client's role as a government representative requires greater opportunities for communication than would be normally allowed in legal proceedings, I maintain that involvement of EPA counsel in such communications is required. In the future, if there are policy issues you wish to either bring to my client's attention or to discuss with my client, I suggest you notify me in advance and I will arrange for such communications.

My client has reviewed the restoration plan that you have provided and forwards the following comments. EPA notified Grace that work on the planer building restoration must be stopped on December 6, 2000. Grace did not terminate the work. However, Grace worked with the tenant in developing some plans, brought in skilled contractors, and apparently performed planer building restoration which was satisfactory. Therefore, EPA will not comment on the adequacy of plans for the planer building.

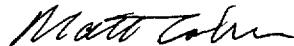
The restoration plans for the remaining four buildings at the Export Plant are unsatisfactory. You indicate plans are not necessary because the tenant does not wish to return to the Export Plant. However, the attorney for the tenant indicates the contrary. (See January 31, 2001 letter from O'Brien to yourself.) Therefore, a plan which simply indicates that electric power will be restored and that doors and concrete floors will be replaced as needed does not provide any of the detail necessary for a restoration plan. For example, a restoration plan for the warehouse building should, at a minimum, include detailed plans for replacement of the floor,



interior walls, cross-bracing, electrical system, paneling and windows. The December 6th letter includes more information on the level of detail needed and subject areas that need to be covered. EPA will not be able to allow for work to continue without such plans. Since the construction season will arrive in the next few weeks, EPA seeks your cooperation in developing an appropriate restoration plan. If you need further guidance on this issue, please contact me and I will arrange for appropriate discussions with my client. Please contact me by April 15, 2001 to notify me of the date by which Grace will provide a new draft restoration plan.

EPA has previously responded to your legal arguments about the landowner's and tenant's participation in relocation and restoration decisions. EPA believes that the law supports such participation, as the relocation and restoration are meant to ensure that the parties can continue business as they had prior to the cleanup. The parties's participation in this process ensures that appropriate decisions are being made. However, EPA also agrees that such participation by the landowner and tenant shouldn't require Grace to pay for work or compensation beyond that required by law. If Grace feels that this is the case with respect to this restoration plan, please contact me and I will arrange for appropriate discussions with all parties to ensure that the intent of the law is achieved.

Sincerely,



Matthew Cohn
Legal Enforcement Program

cc: Paul Peronard